

REMARKS

This responds to the Office Action mailed on September 3, 2009.

Claims 12 and 16 are amended, no claims are canceled, and no claims are added. As a result, claims 1-22 remain pending in this application.

§ 101 Rejection of the Claims

Claims 16-20 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In particular, the Office Action asserts that these claims are “*directed to an apparatus, but there is no apparatus, just code.*”¹ Applicants respectfully traverse.

Applicants reiterate that, the MPEP stipulates that assessment of compliance of the claimed invention with 35 U.S.C. § 101 should be in respect of the relevant claim as a whole,² quoting *Diamond v Diehr*³ as follows: “*In determining the eligibility of respondents' claimed process for patent protection under §101, their claims must be considered as a whole.*” Further, MPEP 2106.01 I explicitly states: “*Computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. Only when the claimed invention taken as a whole is directed to a mere program listing, i.e. to only its description or expression, is it descriptive material per se and hence nonstatutory.*”

When claim 16 is thus considered as a whole, it will be noted that it is in respect of a communications system. The system comprises particular machine- or system elements, such as a first console, a proxy server, and a first control unit. Although, for example, a proxy server may include software or code, such a proxy server is clearly more than “*a mere program listing,*” otherwise it would not be a “server” according to the plain meaning of the term, and it would clearly not be capable of performing the recited functions of, e.g., pooling at least one request, providing access from at least one console to a control unit, and aggregating and storing performance data. A mere program listing is incapable of such functionality. The same

¹ Office Action, page 2, paragraph 3.

² MPEP 2106 II.

³ *Diamond v. Diehr*, 450 U.S. 175, 188-89, 209 USPQ 1, 9 (1981).

arguments apply to system elements recited in claim 16, such as a console and a control unit. Therefore, contrary to the Office Action's assertion, claim 16 recites apparatus or machine elements, not just code.

Applicants thus respectfully request reconsideration and withdrawal of the rejection of claims 16-20 under 35 U.S.C. § 101.

§ 103 Rejection of the Claims

Claims 1, 3, 6, 7, 16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sit et al (US 6,349,336; hereafter “Sit”) in view of Grantges, Jr (US 6,324,648; hereafter “Grantges”). Claims 2, 4, 5, 8, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sit in view of Grantges, in further view of Xu et al (US 7,257,837; hereafter “Xu”). Claims 9, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sit in view of Grantges, in further view of Schweitzer (US 2002/0038364; hereafter “Schweitzer”). Claims 10, 11, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sit in view of Grantges in further view of Schweitzer and Xu. Claims 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sit in view of Grantges in further view of Devine (US 6,968,571). However, since a *prima facie* case of obviousness has not been properly established by the Office, Applicants respectfully traverse the rejection of these claims.

1) *The Applicable Law*

As discussed in *KSR International Co. v. Teleflex Inc. et al.* (U.S. 2007), the determination of obviousness under 35 U.S.C. § 103 is a legal conclusion based on factual evidence.⁴ The legal conclusion, that a claim is obvious within § 103(a), depends on at least four underlying factual issues set forth in *Graham v. John Deere Co. of Kansas City*⁵: (1) the scope and content of the prior art; (2) differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) evaluation of any relevant secondary considerations.

⁴ See *Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 7, 1336-37 (Fed. Cir. 2005).

⁵ 383 U.S. 1, 17 (1966).

Therefore, the test for obviousness under §103 must take into consideration the invention as a whole.⁶ The Examiner must, as one of the inquiries pertinent to any obviousness inquiry under 35 U.S.C. §103, recognize and consider not only the similarities but also the critical differences between the claimed invention and the prior art.⁷

KSR v. Teleflex provides a tripartite test to evaluate obviousness. “A rationale to support a conclusion that a claim would have been obvious is that ***all the claimed elements were known*** in the prior art and one skilled in the art could have combined the elements as claimed by known methods ***with no change in their respective functions***, and ***the combination would have yielded nothing more than predictable results*** to one of ordinary skill in the art.”⁸

2) *Application of § 103 to the Rejected Claims*

Applicants respectfully submit that the Office Action’s factual findings of disclosure by the above-listed references of the claim elements are erroneous in respect of at least some of the claim elements. The Office Action’s rationale for obviousness of the claims is consequently flawed. Furthermore, independent claims 1, 9, 12, and 16 are non-obvious under the guidance of *KSR*, as the cited references neither disclose all the claimed elements of respective independent claims, nor could the elements disclosed by the references be combined with no change in their respective functions.

Claims 1-20

The references do not disclose all the claimed elements

Claim 1 recites, in part:

configuring ***a first control unit***, inside a first firewall, the first control unit separate from the first firewall and ***used to control the network***;

configuring a proxy server outside the first firewall;

⁶ See MPEP 2141.02 I, citing, *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983) .

⁷ See *In re Bond*, 910 F.2d 831, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990), reh'g denied, 1990 U.S. App. LEXIS 19971 (Fed. Cir.1990).

⁸See *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007)). Emphasis added.

establishing a session between the first control unit and the proxy server, wherein establishing the session is executed using an access key; and

establishing a connection between the proxy server and a console, to permit remote *user management of the network by communication between the first control unit and the console via the proxy server.*

The Office Action asserts that the claim element of “*configuring a first control unit, inside a first firewall, the first control unit separate from the first firewall and used to control the network*” is disclosed by Sit.⁹ Applicants respectfully traverse.

According to the Office Action's interpretation, a proxy agent (306) in FIG. 5 of Sit provides a first control unit consistent with claim 1. However, when the functions of the proxy agent (306) in Sit are examined more closely, it is clear that the proxy agent (306) is not “*used to control the network*” and therefore does not constitute a “*control unit*” consistent with claim 1. As is evident from the following extract from Sit, the proxy agent (306) serves to connect Web servers to a firewall, and to act as an interface between components on opposite sides of the firewall:

Reverse proxy agent 306 *forms an interface* between firewall 305 and one or more Web servers 30S1. Each Web server 30S1 communicates with the one or more personal computers (PCs) 310I. Each PC 310I incorporates a communication program that conforms to the HTTP protocol. ***Reverse proxy agent 306 is responsible for interfacing each Web server 30S1 to firewall 305.*** Reverse proxy agent 306 (hereafter “agent”) *initiates a connection*, in response to a request received from a Web server 30SI, through the firewall to a reverse proxy device 312 positioned on the external side 304 of firewall 305. This connection is kept open until the user closes the connection.

Another function of agent 306 is to *extract browser requests that are received over the connection from external components and to forward them to an appropriate Web server 30SI*. For example, agent 306 makes requests to Web server 30S1 on behalf of a browser 314E that is located on external side 304 of firewall 305. A further function of agent 306 is to *encode responses received from Web server 30S1 as a request*, so as to

⁹ Office Action, page 3, lines 4-6.

assure that a subsequent response from browser 314E is passed by firewall 305.¹⁰

In such manner, the protective functionality of firewall 305 is bypassed by the *wrapping actions of agent 306* and reverse proxy 312. Except for the initial request that establishes a connection, agent 306 causes responses received from the internal side 302 to look like requests, and converts requests received from firewall 305 into responses. Similarly, reverse proxy 312 causes requests received from firewall 305 to be converted to responses for dispatch to a requesting browser 314E and causes requests received from a browser 314E to look like a response.¹¹

Clearly, such interfacing and communication functions are distinct from the functions performed by a control unit used to control the network, consistent with Applicants' specification and as recited in claim 1. Applicants therefore submit that, contrary to the Office Action's interpretation, Sit does not disclose the claim element of “*a first control unit, inside a first firewall, the first control unit separate from the first firewall and used to control the network.*” Likewise, the establishment of a session described in Grantges, and cited by the Office Action in support of its contention that Grantges discloses establishing of a session between a control unit and a proxy server,¹² is a connection between two proxy servers on opposite sides of a firewall,¹³ neither of which is a control unit used to control a network consistent with claim 1.

Applicants therefore submit that the Office Action's findings of disclosure by Sit of the above-discussed claim element is erroneous, that neither Sit nor Grantges discloses or suggests this claim element, and that the Office Action's rationale for non-obviousness of claim 1 is consequently flawed. Independent claims 9, 12, and 16 includes similar or analogous claim elements, and these arguments therefore apply *mutatis mutandis* to these independent claims.

The references could not be combined without change in their respective functions

In view of the fact that the proxy server (306) described in Sit is not a control unit, but is instead a proxy server, the features of Sit and Grantges could not be combined to provide a

¹⁰ Sit, column 7, lines 28-48; emphasis added.

¹¹ Id., column 8, lines 3-13; emphasis added.

¹² Office Action, page 3, lines 12-13.

¹³ See for example Grantges, FIG. 1.

system as recited in claim 1 without changing at least the functions of the proxy server (306). For example, claim 1 recites the establishing of a connection between a proxy server and a console, ***to permit remote user management of the network*** by communication between the first control unit and the console. Such remote user management of a network by use of the proxy server (306) of Sit would require changing the functions of, at least, the proxy server (306).

Conclusion

For the reasons set forth above, at least one claimed feature of independent claims 1, 9, 12, and 16 is neither taught nor suggested by the abovementioned references, and the features of the references could not be combined to provide the recited systems without changing their respective functions. Therefore, under the guidance of *KSR*, the above-listed independent claims are clearly non-obvious over these references.

In addition, any claim depending from a non-obvious independent claim is also non-obvious.¹⁴ Therefore, claims 2-8, 10, 11, 13-15, and 17-20 should also be in condition for allowance, and the Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-20 under 35 U.S.C. § 103(a).

Claims 21 and 22

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devine (US 6,968,571) in view of Smith (6,341,311). Applicants respectfully traverse.

Claim 21 recites, in part:

- at a proxy server, receiving a console request message from a console, the console request message including at least one of a request for network management data, a request for Internet Protocol (IP)-Private Branch Exchange (PBX), or a request for status information;
- using a processor, automatically creating a request object;
- adding the request object to a pool; and
- notifying a control unit of the request object, the control unit being inside a firewall and used to control a network.

¹⁴ See MPEP § 2143.03.

The Office Action asserts that Devine teaches the claim elements creating a request object, adding the request object to a pool, and notifying a control unit of the request object, the control unit being inside of a firewall.¹⁵ The Office Action cites the following extract of Devine in support of this assertion.

The message wrappers are examined, revealing the user and the target middle-tier service for the request. A first-level validation is performed, making sure that the user is entitled to communicate with the desired service. The user's entitlements in this regard are fetched by the dispatcher server from StarOE server 217 at logon time and cached. Assuming that the Requestor is authorized to communicate with the target service, the message is then forwarded to the desired service's proxy. Each of these proxy processes may perform a validation process for examining incoming requests and confirming that they include validly formatted messages for the service with acceptable parameters; a translation process for translating a message into an underlying message or networking protocol; and, a management process for managing the communication of the specific customer request with the middle-tier server to actually get the request serviced. Data returned from the middle-tier server is translated back to client format, if necessary, and returned to the dispatcher server as a response to the request.

It is unclear to Applicants which feature of Devine is interpreted by the Office Action as constituting a “*control unit... used to control a network*” consistent with claim 21. As evident from the above-quoted extract, the relevant portions of Devine merely describe forwarding of a request to a “*desired service's proxy*.” Applicants submit that such proxies are not equivalent to a control unit used to control a network, consistent with claim 21.

It is thus submitted that, contrary to the Office Action's position, Devine does not teach or suggest, at least, the claim element of notifying a control unit of a request object, the control unit being inside a firewall and used to control a network.

Therefore, under the guidance of *KSR*, Therefore, under the guidance of *KSR*, claim 21 is non-obvious over Devine in view of Smith. In addition, any claim depending from a non-obvious independent claim is also non-obvious.¹⁶ Therefore, claim 22 should also be in condition for

¹⁵ Office Action, page 16, lines 11-13.

¹⁶ See MPEP § 2143.03.

allowance, and the Applicants respectfully request reconsideration and withdrawal of the rejection of claims 21 and 22 under 35 U.S.C. § 103(a).

CONCLUSION

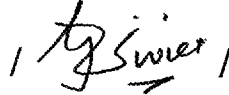
Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (408) 278-4041 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 4th day of January, 2010.



Jonathan Ferguson